

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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## COMPLETE TITLE OF CASE

ELLIS McSWAIN, APPOINTING AUTHORITY, and THE BOARD OF PROBATION AND  
PAROLE, MISSOURI DEPARTMENT OF CORRECTIONS,

Respondents,

v.

CLETUS ANDREW MORTON,

Appellant.

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**DOCKET NUMBER WD77651**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** December 23, 2014

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## APPEAL FROM

The Circuit Court of Cole County, Missouri  
The Honorable Patricia S. Joyce, Judge

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## JUDGES

Division Three: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

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## ATTORNEYS

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Attorney for Respondents,

David J. Moen  
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Attorney for Appellant.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ELLIS McSWAIN, APPOINTING	)	
AUTHORITY, and THE BOARD OF	)	
PROBATION AND PAROLE, MISSOURI	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondents,	)	OPINION FILED:
	)	December 23, 2014
v.	)	
	)	
CLETUS ANDREW MORTON,	)	
	)	
Appellant.	)	

WD77651

Cole County

**Before Division Three Judges:** Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

Cletus Morton, a Parole Officer with the Division of Probation and Parole, became intoxicated and discharged a firearm on his front porch, in an apparent suicide attempt, causing his arrest and charges of felony unlawful use of a weapon to be filed. Ellis McSwain, the appointing authority for the Division, dismissed Morton from employment for violation of Division policy. The Administrative Hearing Commission held that McSwain did not have cause to terminate Morton's employment, because Morton had not "willfully" violated any policies because he was not thinking clearly at the time of the incident due to alcohol and depression. The Circuit Court of Cole County reversed. Morton appeals.

**AFFIRMED.**

**Division Three holds:**

1. Before an agency may dismiss an employee covered by Missouri's merit law, the agency first must determine that there is cause for the dismissal. The agency must then perform a second inquiry, whether dismissal is in the interests of efficient administration and whether the good of the service will be served thereby.

2. Violation of agency policy will serve as cause to dismiss an employee, regardless of whether the violation was willful, if the employee engages in scandalous and disgraceful conduct, while on or off duty, where this conduct tends to bring the state service into public disrepute, or if the employee has exhibited behavior which adversely affects the employee's job performance, the employing agency, or both.
3. A criminal justice officer drunkenly brandishing a firearm and recklessly firing it in public is scandalous and disgraceful conduct that tends to bring the public service into disrepute and adversely affects the employee's ability to continue his functions.
4. It is not necessary for an agency to cite specifically to the Code of State Regulations in a notice of dismissal. It is sufficient to set forth the agency policy that was violated, along with a general description of the time and nature of the conduct.
5. Ultimately, the question of whether termination was for the good of the service is a matter for the agency's determination. So long as the stated reason for dismissal contains support in the record, a reviewing court will not substitute its judgment for that of the agency as to what is for the good of the service.

**Opinion by: Karen King Mitchell, Presiding Judge**

December 23, 2014

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.